

REMARKS

Claims 1-43 remain in the application for consideration. In view of the following remarks, Applicant respectfully requests reconsideration and allowance of the subject application.

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Declarations

In the current Office Action, the Office argues that the declaration submitted by Applicant is not sufficient to overcome the ADS reference. Specifically, the Office argues:

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Office Action, Pages 2-3

Since copyright date is a legal date that reflects the year in which an issue is registered for copyright protection, and the date indicates the year of first publication of the work. Based on the copyright date of 2001, Exhibits 3 and 4 ***demonstrate that enclosed information is available to the public for more than one year before the filing date of the application***, therefore applicant cannot overcome the rejection either a 37 CFR 1.131 affidavit to antedate the reference or a 37 CFT 1.132 affidavit to show derivation of the reference subject matter from applicant and invention by applicant.

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As such, the affidavit is insufficient to overcome the prior art references relied upon in the rejections of record. The rejections are maintained by the Examiner.

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Applicant respectfully disagrees with the Office's arguments and submits that the copyright date contained in the Exhibits does not mean that the material was *registered* for copyright protection. Rather, the Exhibits were simply *marked* with copyright notice and kept confidential within Microsoft. If the Office disagrees, then perhaps the Office can produce a document from the Copyright Office that proves otherwise. The exhibits are being used to show that the ADS reference was derived from Applicant's own work. When the associated documents became public is not necessarily related to the date that appears in a copyright notice. Accordingly, the fact that the exhibits were copyrighted in 2001 does not affect the sufficiency of the declaration. The Office appears to be implying

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that because the references contained in the exhibits have a copyright date of 2001, that they can be used as 102(b) prior art to make out the rejection of the claims. This is simply not the case.

Furthermore, Applicant respectfully submits that the Office cannot make out a
5 rejection of the claims using Exhibits 3 and 4, because Exhibits 3 and 4 clearly state
“**Microsoft Confidential**. © 2001 Microsoft Corporation...**FOR DISCLOSURE UNDER
NDA ONLY**.” Accordingly, these exhibits do not appear to have been disclosed to the
public in 2001. Just because a document has a copyright date, does not mean that the
document was publicly disclosed on the date appearing in the notice. In this case, these
10 exhibits appear to have been kept **confidential** within Microsoft. Accordingly, because
the exhibits were kept confidential within Microsoft, they do **not qualify as 102(b) prior
art** because they were not disclosed to the public in 2001.

§ 102 Rejections

15 Claims 13-15, 18-19, 22-23, 25, 27-28, 30-31, 34-40, and 42 stand rejected under
35 U.S.C. § 102(a) as being anticipated by “Image Based Installation of the Operating
System and the Cluster Service Using Automated Deployment Services (ADS)”, January
1, 2003, Microsoft TechNet (hereinafter “ADS”).

§ 103 Rejections

20 Claims 1-2, 4-5, 7-12, 20-21, 26, 29, and 43 stand rejected under §103(a) as being
obvious under ADS in view of “Lab: Automated Deployment Services”, June 23, 2003.
(hereinafter “LAB”).

25 Claims 3 and 6 stand rejected under §103(a) as being obvious under ADS in view
of LAB and further in view of “Complete Pre-Upgrade Tasks”, March 23, 2003,
Microsoft TechNet. (hereinafter “CPUT”).

Claims 16, 17, 24, 32, 33 and 41 stand rejected under §103(a) as being obvious
under ADS in view of CPUT.

1.132 Declaration to Traverse the ADS Reference

In making out the rejection of claims 1-43, the Office uses ADS as the primary reference. Applicant submits that the content of ADS is attributable to the inventors of the current application. In § 2132.01 of the MPEP under the heading “APPLICANT CAN
5 REBUT *PRIMA FACIE* CASE BY SHOWING REFERENCE’S DISCLOSURE WAS DERIVED FROM APPLICANT’S OWN WORK”, this section instructs that a rejection can be “**overcome by submission of a specific declaration by the applicant establishing that the article is describing applicant’s own work.** *In re Katz*, 687 F.2d 450, 215 USPQ 14 (CCPA 1982).”

10 Accordingly, Applicant submits that the declaration submitted with the last response clearly establishes that the ADS reference describes Applicant’s own work. The declaration identifies two disclosure documents that originally comprised the disclosure packet associated with the subject matter of the present application. In addition, several similarities between these documents and the ADS reference are identified and establish
15 that the ADS reference describes a Microsoft product which was described in the disclosure packet and which pertains to the inventors’ work.

In light of this declaration, the ADS reference is removed as a reference.

Accordingly, claims 1-43 are allowable.

Conclusion

All of the claims are in condition for allowance. Accordingly, Applicant requests reconsideration and issuance of a Notice of Allowability. If the Office's next anticipated action is to be anything other than issuance of a Notice of Allowability, Applicant
5 respectfully requests a telephone call for the purpose of scheduling an interview.

Respectfully Submitted,

Date: August 26, 2008

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